

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Interconnection and Resale Obligations)	
Pertaining to)	CC Docket No. 94-54
Commercial Mobile Radio Services)	
)	
)	
)	
)	

**THIRD REPORT AND ORDER AND MEMORANDUM OPINION AND ORDER ON
RECONSIDERATION**

Adopted: July 13, 2000

Released: August 28, 2000

By the Commission:

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I. INTRODUCTION

1. On June 27, 1996, the Commission adopted its *Second Report and Order and Third Notice of Proposed Rulemaking*¹ in this docket. In the *Second Report and Order*, we promulgated a rule that requires certain providers of Commercial Mobile Radio Services (CMRS) to provide “manual” roaming

¹ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996). Those portions of this item constituting the Second Report and Order will be referenced herein as “*Second Report and Order*,” while those portions constituting the Third NPRM will be referenced as “*Third NPRM*.”

service upon reasonable request to any subscriber to any of these services whose handset is capable of accessing their systems.² In the *Third NPRM*, we sought further comments on other aspects of the roaming issue, such as whether the “manual” roaming rule should be subject to a sunset provision³ and whether we should require any carriers to provide “automatic” roaming on a non-discriminatory basis.⁴

2. In this Memorandum Opinion and Order, we address issues relating to reconsideration and/or clarification of the “manual” roaming rule as adopted in 1996. Upon reconsideration, we generally affirm our decision in the *Second Report and Order* to extend the “manual” roaming rule, which previously had applied only to cellular providers, to include certain broadband personal communications services (PCS) and specialized mobile radio (SMR) providers. However, we are modifying our order in two respects to make our roaming requirement consistent with our recent similar modifications to the resale rule in the *Resale Order on Reconsideration*.⁵ Finally, we are clarifying that the rule applies on a system-by-system basis.

3. We are terminating our consideration in this docket (CC Docket No. 94-54) of those issues relating to “automatic” roaming and the potential sunset of the “manual” roaming rule that were raised in the *Third NPRM*.⁶ Given the significant advances in technology and the rapid expansion and development of the CMRS market in the intervening years, we find that the questions raised in the record no longer reflect the current marketplace. Therefore, we plan in the near future to commence a new, separately docketed proceeding that will enable us to better address the relevant issues relating to “automatic” and “manual” roaming.

II. BACKGROUND

4. The CMRS roaming proceeding was initiated in 1994 by the *First NPRM and Interconnection NOI*,⁷ which addressed a broad range of CMRS regulatory issues, including roaming.⁸ Roaming occurs when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the

² *Second Report and Order*, 11 FCC Rcd at 9470 (¶¶ 12-13).

³ *Third NPRM*, 11 FCC Rcd at 9464 (¶ 2), 9479 (¶¶ 31-32).

⁴ *Id.* at 9464 (¶ 2), 9471-78 (¶¶ 15-30). “Manual” and “automatic” roaming are defined in the *Second Report and Order*. *Second Report and Order*, 11 FCC Rcd at 9465-66 (¶¶ 5-6).

⁵ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Memorandum Opinion and Order On Reconsideration*, FCC 99-250 (rel. Sept. 27, 1999) (“*Resale Order on Reconsideration*”). The *Resale Order on Reconsideration* generally affirmed, with some modification, our resale rule, which was set forth in our *First Report and Order*, Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *First Report and Order*, CC Docket No. 94-54, 11 FCC Rcd 18455 (1996) (“*First Report and Order*”), *aff’d sum nom.* Cellnet Communications v. FCC, 149 F.3d 429 (6th Cir. 1998).

⁶ *Third NPRM*, 11 FCC Rcd. at 9464 (¶ 2) (sunset of “manual” roaming rule) and 9471-80 (¶¶ 15-35) (“automatic” roaming).

⁷ Equal Access and Interconnection Obligations Pertaining to Commercial Radio Services, CC Docket No. 94-54, *Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5404 (1994) (“*First NPRM and Interconnection NOP*”).

⁸ *See id.* at 5465-67 (¶¶ 136, 138).

subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call.⁹ Roaming service can be provided through a variety of technical and contractual arrangements. The basic technical requirement for either “manual” or “automatic” roaming is that the subscriber have a handset technically capable of accessing the host system.¹⁰ The Commission’s questions and concerns in the *First NPRM and Interconnection NOI* that related to roaming were furthered elucidated in 1995 in the *Second NPRM*.¹¹

5. In 1996, following review and evaluation of comments responding to the *Second NPRM*, we determined in the *Second Report and Order* that the availability of roaming on broadband wireless networks was important to the development of nationwide, ubiquitous, and competitive wireless voice telecommunications, and that market forces alone might not be sufficient to cause roaming to become widely available during the period in which systems to provide these services were being built.¹² The record convinced us that roaming capability could be a key consideration for subscribers in the marketplace for two-way, interconnected, switched voice mobile services, and that new entrants providing these services could be at a competitive disadvantage vis-à-vis incumbent wireless carriers if their subscribers had no ability to roam on other networks.¹³ Accordingly, we ordered that our then-existing “manual” roaming rule requiring cellular carriers to serve individual roamers¹⁴ be extended to include other CMRS providers, both broadband PCS and “covered” SMR, that offer comparable competitive telephony services so long as the roamer’s handset is technically capable of accessing their services.¹⁵

III. MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

6. Before us now are three petitions for reconsideration and/or clarification of the “manual” roaming rule, all focusing on the extent to which SMR service providers should be covered by the “manual” roaming rule. In addition, we consider one petition for declaratory ruling in which clarification of the “manual” roaming rule was sought. Parties submitting these petitions, comments on and oppositions to these petitions, and reply comments are listed in Appendix A, Section I, *infra*.

A. Retention of Manual Roaming Rule

7. In its petition, Nextel Communications, Inc. (Nextel), a provider of SMR services, seeks reconsideration of our *Second Report and Order*, asserting that mandated roaming obligations were premature, unnecessary, and arbitrary.¹⁶ Nextel has not provided any additional arguments that were not

⁹ See *Second Report and Order*, 11 FCC Rcd at 9464-66 (¶¶ 3, 5-6).

¹⁰ See *id.* at 9466 (¶ 7).

¹¹ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Notice of Proposed Rulemaking*, 10 FCC Rcd 10666 (1995) (“*Second NPRM*”). See *id.* at 10688-94.

¹² *Second Report and Order*, 11 FCC Rcd at 9464 (¶ 2), 9468-70 (¶¶ 10-11).

¹³ *Id.* at 9469-70 (¶ 11).

¹⁴ See 47 C.F.R. § 22.901 (requiring cellular carriers to serve roamers).

¹⁵ *Second Report and Order*, 11 FCC Rcd at 9464 (¶ 2), 9470-71 (¶¶ 12-13).

¹⁶ Nextel Petition at 2-7.

addressed in the *Second Report and Order*, and we believe that the record underlying the *Second Report and Order* established the legal and policy bases for the rule at the time it was adopted.¹⁷ We note, however, that in the upcoming proceeding we intend to examine the continued need for the “manual” roaming rule.

8. To the extent Nextel raises issues relating to possible technical difficulties associated with its providing “manual” roaming services on its SMR system, those concerns are addressed below in Section III (C).

B. Modifications to the Scope of the Manual Roaming Rule

9. In our *Second Report and Order*, we limited the scope of the “manual” roaming rule in the SMR context to “covered” SMR providers, a definition which we intended to include only those providers who compete directly with cellular and broadband PCS.¹⁸ Under the existing rule, “covered” SMR providers include certain SMR licensees within two classes. The first class consists of 800 MHz and 900 MHz SMR licensees that hold geographic area licenses. The second covers incumbent wide area SMR licensees, defined as licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR service, either by waiver or under Section 90.629 of our rules.¹⁹ Within these classes, “covered” SMR providers “includes only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services.”²⁰ We stated that local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering only data, one-way, or stored voice services on an interconnected basis, are not covered by the roaming rule because these providers do not compete substantially with cellular and broadband PCS providers.²¹ We found that the costs of applying the roaming rule to their operations would outweigh the benefits.²²

10. In petitions for reconsideration and/or clarification and in comments, the American Mobile Telecommunications Association (AMTA), Nextel, Personal Communications Industry Association (PCIA), and Small Business in Telecommunications, Inc. (SBT) request that the Commission clarify or modify the definition of “covered” SMR providers to which the roaming rule applies.²³ These parties

¹⁷ See generally *Second Report and Order*, 11 FCC Rcd at 9463-71 (¶¶ 1-14). We also note that in their comments AT&T Wireless Services, Inc. (AT&T Wireless) and Southern Company offer various arguments in support of our “manual” roaming requirement. See AT&T Wireless Comments in Opposition at 1-3; Southern Company Comments in Opposition at 6-9.

¹⁸ *Second Report and Order*, 11 FCC Rcd at 9470 (¶ 12).

¹⁹ *Id.*

²⁰ *Id.*; see 47 C.F.R. § 20.12(a) (1996).

²¹ *Second Report and Order*, 11 FCC Rcd at 9471 (¶ 14).

²² *Id.*

²³ See AMTA Petition for Reconsideration at 2-7; Nextel Petition for Reconsideration and Clarification at 7-9; PCIA Comments at 1-4; and, SBT Petition for Reconsideration or Clarification at 1-6. Each of these parties raised identical concerns regarding the definition of “covered” SMR with respect to CMRS providers’ resale obligations. See *Resale Order on Reconsideration* at ¶ 42. AMTA requests the same clarification in a separate but related petition for declaratory judgment. See AMTA Petition for Declaratory Ruling (filed December 15, (continued....))

contend that, as written, the definition inadvertently includes SMR providers that we did not intend to include, or should not include, with respect to roaming obligations. In comments in opposition to the petitions, AT&T Wireless opposes the specific definitional modification proposed by AMTA and Nextel.²⁴

11. In its comments, RAM Mobile Data USA Limited Partnership (RAM) asserts that the current definition of “covered” SMR properly excludes the data-only SMR services²⁵ that it provides, and that any definitional modification should continue to exclude data-only SMR services because such services do not compete in the same market as traditional cellular and broadband PCS networks, for which the roaming obligations were crafted.²⁶

12. Finally, Nextel also asks us to clarify that the definition of “covered” SMR applies on a “system-by-system” basis for SMR services, and not uniformly to each system within a particular licensee’s set of systems.²⁷

13. Modification of Definition of “Covered” Providers. On reconsideration, we now conclude that our objective with respect to SMR is best achieved by limiting the “manual” roaming rule to reach those CMRS providers that offer real-time, two-way switched voice and data service that is interconnected with the public switched telephone network utilizing an “in-network” switching facility.²⁸ In so doing, we abandon our previous criterion, which was based on a carrier’s license authority, in favor of a technical and operational criterion, *i.e.*, in-network switching capacity, which more closely parallels our intention to cover only those SMR carriers that compete directly with traditional providers of cellular service and broadband PCS. In addition, we are extending the rule to cover not only voice, but data-only service as well. Accordingly, we revise the applicable rule, 47 C.F.R. Section 20.12 (“Resale and Roaming”), as set forth in Appendix C, *infra*.

14. We agree with AMTA,²⁹ Nextel, and SBT that the “covered” definition adopted in the *Second*

1996) at 1-12. In this petition, AMTA sought similar clarification in related rulemakings on resale, number portability, and E911. *Id.* In light of our disposition of the petitions for reconsideration, we are dismissing AMTA’s Petition for Declaratory Ruling as moot.

²⁴ See AT&T Wireless Comments in Opposition at 1-3.

²⁵ See *Second Report and Order*, 11 FCC Rcd at 9470 (¶ 12) (only voice services are included with respect to “covered” SMR licensees).

²⁶ RAM Comments at 1-3.

²⁷ Nextel Petition at 9.

²⁸ The modification we adopt is consistent with the modification we made recently to our CMRS resale rule, as well as modifications in our earlier orders pertaining to number portability and enhanced 911 systems. See *Resale Order on Reconsideration* at ¶¶ 46-47; Telephone Number Portability, CC Docket No. 95-116, *Second Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21204, 21228-30 (¶¶ 52-57) (1998) (“*Number Portability Second Order on Reconsideration*”); Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22703-04 (¶¶ 76-78) (1997) (“*E911 Reconsideration Order*”), *further recon. pending*.

²⁹ In agreeing with AMTA’s position on this point, we agree with both its petition for reconsideration and its petition for declaratory judgment.

Report and Order is over-inclusive with respect to certain types of SMR systems. As currently written, the rule requires all geographic area or wide-area SMR licensees to comply with the “manual” roaming rule if they provide real-time, two-way interconnected voice service. As petitioners point out, this brings within the “covered” SMR definition any SMR provider with a geographic or wide-area license that provides any kind of two-way voice service; thus, even SMR providers that primarily offer traditional dispatch services but also offer limited interconnection capability are potentially subject to the roaming rule. We believe this result is inconsistent with our determination that the costs of extending the rule to providers that do not compete with traditional cellular and broadband PCS providers in the mass consumer market would exceed the benefits.

15. We conclude, as has been suggested by several petitioners and as we have found in three other proceedings,³⁰ that an important indicator of a provider’s ability to compete with traditional cellular and broadband PCS providers is whether the provider’s system has “in-network” switching capability. In-network switching facilities accommodate the reuse of frequencies in different portions of the same service area, thus enabling an SMR provider to offer interconnected service to a larger group of customers and to compete directly with cellular and broadband PCS in the mass consumer market. We therefore adopt in-network switching capability as a criterion for coverage under the “manual” roaming rule.

16. Also, as we have done in the contexts of resale, number portability, and E911,³¹ we extend our modified definition of “covered” SMR to providers of similar service over cellular and broadband PCS spectrum. This reflects the fact that SMR services excluded from coverage under our definition, such as traditional dispatch services, can be provided using cellular or broadband PCS spectrum as well as SMR spectrum.³²

17. We decline to adopt the alternative proposal offered by AMTA and PCIA that the roaming rule should exclude providers or systems that serve fewer than a particular number of mobile units.³³ The reasonableness of the proposed numerical thresholds is unsupported by the record. Moreover, we conclude that the number of subscribers to a system is not a reliable indicator of the system’s capacity or its ability to compete with cellular and broadband PCS providers. We seek to develop a definition that covers providers based on the functional nature of the service provided. We find that a definition based solely on the size of a system without regard for the types of services provided would be incompatible with our policy objectives.³⁴

18. Extending Application to Data-Only Service. The Commission in its 1996 *Second Report and*

³⁰ See *Resale Order on Reconsideration* at ¶¶ 44-47; *Number Portability Second Order on Reconsideration*, 13 FCC Rcd at 21228-30 (¶¶ 52-57); *E911 Reconsideration Order*, 12 FCC Rcd at 22703-04 (¶¶ 76-78).

³¹ See *Resale Order on Reconsideration* at ¶ 47; *Number Portability Second Order on Reconsideration*, 13 FCC Rcd at 21229-30 (¶ 54); *E911 Reconsideration Order*, 12 FCC Rcd at 22704-05 (¶ 81).

³² See Amendment of the Commission’s Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965 (1996).

³³ See AMTA Petition at 7-8; PCIA Comments at 2-3.

³⁴ Our ruling here is consistent with our rejection of AMTA’s and PCIA’s similar arguments made in their petitions for reconsideration of the resale rule. *Resale Order on Reconsideration* at ¶48.

Order defined “covered” SMR providers as those that, *inter alia*, provided voice service.³⁵ At that time, the exclusion of providers of data-only SMR service from the “covered” definition was consistent with our *First Report and Order*, issued earlier in 1996, which addressed CMRS resale issues in this same docket (CC Docket No. 94-54).³⁶ As we explained with regard to the resale rule in the *First Report and Order*, we did not then believe that data services offered by otherwise “covered” SMR providers competed with services provided by cellular and PCS providers.³⁷ However, in our *Resale Order on Reconsideration*, issued last year, we came to the opposite conclusion and we modified the resale rule to include resale requirements for SMR providers of data services.³⁸ For the reasons set forth there, we now similarly modify the roaming rule as well, thereby rejecting RAM’s argument.³⁹

19. Application on a System-by-System Basis. Finally, we agree with Nextel’s assertion that the definition of “covered” services for roaming purposes should be applied on a system-by-system basis. Therefore, we clarify that if a licensee provides “covered” service on systems in certain areas of the country, and provides only traditional dispatch services on systems in other areas of the country, only the “covered” systems would be subject to the “manual” roaming rule. Thus, the rule will not apply in the geographic area(s) where a carrier provides only traditional dispatch service, provided that the carrier clearly identifies the area(s) in question.⁴⁰

C. Manual Roaming Requirement Pertaining to Nextel

20. In its petition, Nextel also is concerned that the roaming rule mandates that its SMR system provide “manual” roaming services to other “covered” SMRs, and thus seeks clarification of the rule with respect to the particular SMR service it provides. Nextel contends that application of the “manual” roaming rule would require it to modify its system and otherwise cause it to incur significant costs in a manner that would violate the Commission’s intent with regard to the obligations imposed by the rule.⁴¹ Specifically, Nextel claims that its compliance with the rule is technically infeasible because SMR systems, unlike cellular systems, do not share control channels or interoperability standards, and because Nextel’s system, as currently configured, cannot recognize mobile units, even those that have the appropriate control channels, if those units are not assigned an individual mobile identifier registered to operate under Nextel’s system.⁴² In comments in opposition, Southern Company asserts that SMR carriers can readily program their systems to have some overlap of control channels or to use each other’s control channels so as to enable roaming on technically similar systems; indeed, Southern Company claims that it has programmed

³⁵ *Second Report and Order*, 11 FCC Rcd at 9470 (¶ 12).

³⁶ *See First Report and Order*, 11 FCC Rcd at 18466 (¶ 19).

³⁷ *Id.*

³⁸ *See Resale Order on Reconsideration* at ¶¶ 57-60.

³⁹ Our rejection of RAM’s argument is consistent with our rejection of its similar arguments on resale. *Id.* at ¶ 60.

⁴⁰ This clarification, too, is consistent with our ruling in our *Resale Order on Reconsideration*. *Id.* at ¶ 52.

⁴¹ *See* Nextel Petition at 3-7.

⁴² *Id.* at 4-6.

its system to allow Nextel subscribers roaming access,⁴³ and that Nextel has enabled roaming both among its extended network and affiliated networks and between its network and others that do not share control channels and were not registered in its system.⁴⁴ In response to Southern Company, Nextel alleges additional technical costs and proprietary concerns, as well as the potential degradation of services, were the “manual” roaming rule applied to its SMR service.⁴⁵

21. In our *Second Report and Order*, we stated that licensees are required to provide “manual” roaming to subscribers of any cellular, broadband PCS, or “covered” SMR services so long as that subscriber is using a handset that is technically capable of accessing the licensee’s system.⁴⁶ We also, however, stated that our “manual” roaming rule did not require licensees to modify their systems in order to provide “manual” roaming service to end users.⁴⁷ Nextel in its petition and Southern Company in its opposition comments have raised complex technical issues; each asserts bases for our reaching opposite conclusions with respect to the rule’s application to Nextel’s SMR service. We confirm that the “manual” roaming rule applies to Nextel to the extent it falls within the modified definition of “covered” CMRS providers. Beyond that, we decline here to reach the factual determination of whether Nextel is required by our rule to provide “manual” roaming to Southern Company’s or other SMR companies’ subscribers. Accordingly, we reject Nextel’s proposed clarification of the rule. We believe that this issue, which requires a specific factual determination, would more appropriately be resolved in a petition for declaratory ruling directed specifically toward this issue or in the context of a complaint filed pursuant to Section 208. Carriers should be on notice that, pursuant to Section 208, unjust or unreasonable behavior in the face of a request for manual roaming will swiftly be addressed by the Commission, and appropriate enforcement action taken.

IV. THIRD REPORT AND ORDER

22. In issuing the *Third NPRM* in 1996, we recognized that the CMRS marketplace was rapidly expanding and technologies were dramatically evolving.⁴⁸ We concluded that the record compiled in response to the *Second NPRM* was inconclusive regarding the need for an “automatic” roaming requirement, and that promulgation of an “automatic” roaming rule would be premature.⁴⁹ In 1997, the Wireless Telecommunications Bureau issued a public notice requesting additional comment on a potential “automatic” roaming requirement in light of intervening market and technological developments.⁵⁰ Unlike

⁴³ Southern Company Comments at 3-6.

⁴⁴ *Id.* at 5-6. We note, also, that Southern Company alleges that Nextel’s provision of roaming services to affiliates, but not to non-affiliates such as Southern Company, constitutes discrimination prohibited by Section 202 of the Communications Act. 47 U.S.C. § 202.

⁴⁵ Nextel Reply Comments at 2-6.

⁴⁶ See *Second Report and Order*, 11 FCC Rcd at 9470 (¶ 13).

⁴⁷ *Id.*

⁴⁸ *Third NPRM*, 11 FCC Rcd at 9471-73 (¶¶ 15-16).

⁴⁹ *Id.* Parties commenting on the *Third NPRM* are listed in Appendix A, Section II, *infra*.

⁵⁰ See Public Notice, “Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks [in] Docket No. 94-54,” DA 97-2558 (December 5, 1997) (*Public Notice*). Parties commenting on that public notice are listed in Appendix A, Section III, *infra*.

“manual” roaming, “automatic” roaming enables a roaming subscriber to originate or terminate a call without taking action other than turning on his or her telephone. Provision of “automatic” roaming requires a contractual arrangement between the home and roamed-on systems.⁵¹

23. Over the last few years, dramatic changes have continued to occur in the CMRS market and in CMRS technologies. For instance, in most of the largest geographic markets, five or more facilities-based providers are now offering mobile telephone service in at least some portion of the market.⁵² Certain carriers, such as AT&T Wireless, Sprint PCS, Nextel, Verizon, Voicestream, and SBC and BellSouth have established or are in the process of establishing broad geographic “footprints.” Also, in recent years, multi-band and/or multi-mode handsets have become increasingly available.⁵³ In addition, significant advances have occurred in the availability and capabilities of SMR service.⁵⁴

24. Given these substantial developments over the last few years, we believe that an informed decision by the Commission regarding what sort of roaming requirements are appropriate today and for the foreseeable future requires an up-to-date record reflecting current conditions. For the purpose of focusing on these matters and addressing them thoroughly, we believe it best to terminate from this docket (CC Docket No. 94-54) those issues relating to “automatic” roaming and the potential sunset of the “manual” roaming rule that were raised in the 1996 *Third NPRM*, as well as all earlier notices of proposed rulemaking (NPRMs) in Docket No. 94-54. In place of those NPRMs, we plan in the near future to issue a new, separately docketed NPRM. We believe such a new NPRM will enable us better to address the relevant issues relating to “automatic” and “manual” roaming in light of current technological and market conditions.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

25. As required by the Regulatory Flexibility Act, 5 U.S.C. § 604, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible impact on small entities of the policies and rules adopted in this Order on Reconsideration. The Supplemental FRFA is contained in Appendix B.

B. Authority

26. This action is taken pursuant to Sections 1, 4(i), 4(j), 201, 202, 303(r), 309, 332, and 405 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 303(r), 309, 332, and 405.

VI. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED that the rule amendments and clarifications appearing in

⁵¹ See *Second Report and Order*, 11 FCC Rcd at 9465-66 (¶¶ 5-6).

⁵² See Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Fourth CMRS Competition Report*, FCC 99-136, 14 FCC Rcd 10145, 10163-64 (1999).

⁵³ *Id.* at 10171-72.

⁵⁴ *Id.* at 10177.

Appendix C and discussed herein ARE ADOPTED and SHALL BE EFFECTIVE 60 days after publication of a summary of this Order in the Federal Register.

28. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by the American Mobile Telecommunications Association (AMTA) in Docket No. 94-54 IS GRANTED to the extent indicated herein and otherwise IS DENIED, and that AMTA's Petition for Declaratory Ruling (dated December 16, 1996) in Docket No. 94-54 IS DISMISSED AS MOOT.

29. IT IS FURTHER ORDERED that the Petition for Reconsideration and Clarification filed by the Nextel Communications in Docket No. 94-54 IS GRANTED to the extent such Petition seeks clarification and as indicated herein and otherwise IS DENIED.

30. IT IS FURTHER ORDERED that the Petition for Reconsideration or Clarification filed by Small Business in Telecommunications in Docket No. 94-54 IS GRANTED to the extent indicated herein and otherwise IS DENIED.

31. IT IS FURTHER ORDERED that the Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Third Report and Order and Memorandum Opinion and Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A

LIST OF PARTIES IN CC DOCKET NO. 94-54

**I. PETITIONS AND COMMENTS ON THE *SECOND REPORT AND ORDER* ON
“MANUAL” ROAMING**

Petitions for Reconsideration and/or Clarification:

American Mobile Telecommunications Association, Inc. (AMTA)
Nextel Communications, Inc. (Nextel)
Small Business in Telecommunications, Inc. (SBT)

Opposition Comments and other Comments:

AT&T Wireless Services, Inc. (AT&T Wireless)
Personal Communications Industry Association (PCIA)
RAM Mobile Data USA Limited Partnership (RAM)
Southern Company

Reply Comments:

Nextel

Petition for Declaratory Judgment (December 16, 1996)

AMTA

II. COMMENTS ON THE *THIRD NPRM* ON “AUTOMATIC” ROAMING AND SUNSET OF THE “MANUAL” ROAMING RULE

Comments:

AirTouch Communications, Inc. (AirTouch)
Alliance of Independent Wireless Operators (AIWO)
Ameritech
AT&T Wireless Services, Inc. (AT&T Wireless)
Bell Atlantic NYNEX Mobile, Inc. (Bell Atlantic NYNEX)
BellSouth Corporation
Cellular Telecommunications Industry Association (CTIA)
Century Cellunet, Inc.
GTE Mobilenet (GTE)
Integrated Communications Group
Personal Communications Industry Association (PCIA)
PrimeCo Personal Communications, L.P. (PrimeCo)
Radiophone, Inc.
Rural Cellular Association (RCA)
Rural Telecommunications Group
Southwestern Bell Mobile Systems, Inc. (Southwestern Bell Mobile)
Sprint Spectrum L.P., d/b/a Sprint PCS (Sprint PCS)
360° Communications Company
Vanguard Cellular Systems, Inc. (Vanguard)
Western Wireless Corporation (Western Wireless)

Reply Comments:

AIWO
AT&T Wireless
Bell Atlantic NYNEX
BellSouth
CTIA
PCIA
Southern Company
Vanguard
Western Wireless

III. COMMENTS ON THE *PUBLIC NOTICE* ON “AUTOMATIC” ROAMING

Comments:

AirTouch Communications, Inc. (AirTouch)
American Mobile Telecommunications Association, Inc. (AMTA)
AT&T Wireless Services, Inc. (AT&T Wireless)
BellSouth Corporation
Cellular Telecommunications Industry Association (CTIA)
Centennial Cellular Corporation (Centennial)
Cincinnati Bell Wireless Company (Cincinnati Bell Wireless)
GTE Service Corporation (GTE)
Meritel Communications, L.P. (Meritel)
Mobex Communications, Inc.
Nextel Communications, Inc. (Nextel)
Omnipoint Communications, Inc. (Omnipoint)
Personal Communications Industry Association (PCIA)
Rural Telecommunications Group (RTG)
Southern Company
Southwestern Bell Mobile Services, Inc. (Southwestern Bell Mobile)
Sprint Spectrum, L.P. d/b/a Sprint PCS (Sprint PCS)
Telecommunications Resellers Association
360° Communications Company
United States Cellular Corporation (USCC)

Reply Comments:

AirTouch
AT&T Wireless
Bell Atlantic Mobile
BellSouth
CTIA
Centennial
GTE
Omnipoint
Pacific Bell Mobile Services (filed jointly with Southwestern Bell Mobile)
RTG
Southwestern Bell Mobile
USCC

Appendix B

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act, 5 U.S.C. § 604 (RFA),¹ a Final Regulatory Flexibility Analysis (FRFA) was incorporated into Appendix B of the *Second Report and Order and Third Notice of Proposed Rulemaking (Second Report and Order)* in this proceeding.² The Commission received no petitions for reconsideration directed at the Final Regulatory Flexibility Analysis contained therein. The Commission's Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) in this *Third Report and Order and Memorandum Opinion and Order on Reconsideration* ("Memorandum Opinion and Order on Reconsideration") reflects revised or additional information to that contained in the FRFA prepared in 1996. This Supplemental FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.

I. Need for and Purpose of this Action

In this *Memorandum Opinion and Order on Reconsideration*, the Commission generally affirms its decision in the *Second Report and Order* to extend the "manual" roaming rule requiring cellular carriers to serve individual roamers to include other Commercial Mobile Radio Service (CMRS) providers, both broadband Personal Communications Service (PCS) and "covered" Specialized Mobile Radio (SMR), that offer competitive telephony services so long as the roamer's handset is technically capable of accessing their services.

In the *Second Report and Order*, the Commission in 1996 had limited the scope of the "manual" roaming rule in the SMR context to "covered" SMR providers. This included two classes of "covered" providers: first, there were geographic area licensees in the Cellular, Broadband PCS, and the 800 and 900 MHz SMR services; and, second, incumbent wide area licensees who obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or by Section 90.629 of the Commission's rules. Within these classes, "covered" SMR providers was limited to only those licensees who offered real-time, two-way switched voice service that was interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunication services.³ In that order, we stated that local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering only data, one-way, or stored voice services on an interconnected basis, were not covered by the roaming rule because they did not compete substantially with cellular and broadband PCS providers.

In this *Memorandum Opinion and Order on Reconsideration*, the Commission concludes that modification of the scope of the "manual" roaming rule best serves the public interest. The amended Section 20.12(a), promulgated in this order, changes the rule so that the set of "covered" providers clearly excludes providers who do not directly compete in the CMRS mass consumer two-way voice market.

¹ Congress amended the RFA, 5 U.S.C. § 601 *et. seq.*, in the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996) (*Second Report and Order*). The FRFA was presented in Appendix B.

³ See *Second Report and Order*, 11 FCC Rcd. at 9470 (¶ 12); 47 C.F.R. 20.12(a)(1996).

Consequently, the order modifies the scope of the manual roaming rule to apply only to CMRS providers that offer real-time two-way switched voice or data service that is interconnected with the public switched network using *an in-network switching facility*. In so doing, the Commission abandons its previous criterion, which was based on a carrier's license authority, in favor of a technical and operation, *i.e.*, "in-network" switching capacity, which more closely parallels its intention to cover only those SMR carriers that compete directly with traditional providers of cellular service and broadband PCS. Additionally, this revised definition of "covered providers" extends to cellular and broadband PCS providers as well. Finally, the Commission extends the rule to cover not only voice, but also data-only service as well. These modifications are consistent with the definitional modification we recently made with respect to the scope of the resale requirements placed on SMR and other CMRS providers.⁴

II. Summary of Significant Issues Raised by the Public in Response to the Final Regulatory Flexibility Analysis

No petitions for reconsideration were filed in direct response to the FRFA (or even to the previous IRFA in this proceeding). In petitions for reconsideration or clarification, however, and in responsive pleadings, as well, some issues were raised that might affect small entities.⁵ Specifically, some commenters argued that the definition of "covered" SMR should be limited to systems that have an "in-network" switching facility or that serve at least a minimum number of mobile unit, *e.g.*, at least 100,000 mobile units that provide real-time, two-way interconnected voice services or that serve at least 20,000 or more subscribers nationwide. Another commenter argued that any definitional modification to the term "covered" SMR should exclude data-only SMR services.⁶

III. Description and Estimate of the Number of Small Entities Affected by this Memorandum Opinion and Order on Reconsideration

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by our rules.⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁹ A small business concern is one which: (1) is

⁴ In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Memorandum Opinion and Order on Reconsideration*, CC Docket No. 94-54 (FCC 99-250) (rel. Sept. 27, 1999) ("*Resale Order on Reconsideration*") at ¶ 2.

⁵ We discuss these issues in Section III(B), *supra*.

⁶ See also Section V of this Supplemental FRFA, *infra*.

⁷ 5 U.S.C. § 603(b)(3).

⁸ 5 U.S.C. § 601(6).

⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁰

The rule changes in this *Memorandum Opinion and Order on Reconsideration* could affect all small entities who are cellular, broadband PCS, and 800 MHz and 900 MHz SMR licensees. Additionally, the “manual” roaming rule, as modified, will apply to such licensees only if they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

The Commission estimates the following number of small entities may be affected by the rule changes.

Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹¹ According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹² Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Trends in Telephone Service data, 808 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio Telephone (SMR) service, which are placed together in the data.¹³ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the revised regulations adopted in this *Memorandum Opinion and Order on Reconsideration*.

Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁴ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more

¹⁰ Small Business Act, 15 U.S.C. § 632 (1996).

¹¹ 13 C.F.R. §121.201, SIC code 4812.

¹² 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

¹³ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

¹⁴ See Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52 (paras. 57-60) (1996); see also Section 24.720(b) of the Commission's Rules, 47 C.F.R. §24.720(b).

than \$15 million for the preceding three calendar years.¹⁵ These regulations defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.¹⁶ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.¹⁷ Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

Estimates for SMR Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined “small business” for purposes of auctioning 900 MHz SMR licenses,¹⁸ 800 MHz SMR licenses for the upper 200 channels,¹⁹ and 800 MHz SMR licenses for the lower 230 channels²⁰ as a firm that has had average annual gross revenues of \$15 million or less in the three preceding calendar years. This small business size standard for the 800 MHz and 900 MHz auctions has been approved by the SBA. Any rules adopted in this *Memorandum Opinion and Order on Reconsideration* will apply to SMR licensees only if they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Although the Commission does not have definitive information, we estimate that very few small business, incumbent site-by-site SMR licensees offer services meeting this description. Geographic licensees are considered more likely to offer such services. In all cases, we provide estimates that are conservative so as to not underestimate the impact on small entities.

Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the \$15 million size standard. We do not know which of these licensees will offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. We conservatively estimate that the number of small business 900 MHz SMR geographic area licensees that could be affected by rule modifications is at least 60.

The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began

¹⁵ *Id.* at 7852 (¶ 60).

¹⁶ *See, e.g.,* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (¶¶ 114-20) (1994).

¹⁷ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

¹⁸ *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639 (1995).

¹⁹ *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz frequency Band, PR Docket No. 93-144, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995).

²⁰ *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz frequency Band, PR Docket No. 93-144, *Second Report and Order*, 12 FCC Rcd 19079 (1997).

on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. We do not know which of these licensees will offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Therefore, we conservatively estimate that the number of small business 800 MHz SMR geographic area licensees for the upper 200 channels that could be affected by rule modifications is at approximately ten.

The Commission anticipates that a total of 3,853 EA licenses will be auctioned in the lower 230 channels of the 800 MHz SMR service. This figure is derived by multiplying the total number of Economic Areas (EAs) (175)²¹ by the number of channel blocks (22) in the lower 230 channels.²² Three additional upper band channels will be licensed as well.²³ No party submitting or commenting on the petitions for reconsideration giving rise to our *Reconsideration* of October 8, 1999, commented on the potential number of small entities that might participate in the auction of the lower 230 channels and no reasonable estimate can be made. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be affected by this rule modification could be as many as 3,853.

With respect to licensees operating under extended implementation authorizations, by November 1997 thirty-three licensees with extended implementation authority in the 800 MHz SMR Service were granted two years to complete the buildout of their systems.²⁴ At this time, our records indicate that twenty-seven licensees with extended implementation authority still exist, but there may be as few as

²¹ The Department of Commerce Bureau of Economic Analysis has established 172 EAs which cover the continental United States. See "Final Redefinition of the BEA Economic Areas," 60 Fed. Reg. 31,114 (March 10, 1995). The Commission has established three additional EA licensing regions for the five U.S. possessions.

²² The lower 80 channels were divided into 16 blocks of 5 channels each and the General Category channels were divided into 6 blocks of 25 channels each. This results in 22 channel blocks available for auction in each of the 175 EAs for a total of 3,850 licenses. See also, "Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service General Category Frequencies in the 851-854 MHz Band Scheduled for August 23, 2000," *Public Notice*, DA 00-667 (rel. March 23, 2000); "Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Frequencies in the Lower 80 Channels Scheduled for September 13, 2000," *Public Notice*, DA 00-668 (rel. March 23, 2000). For the actual auction announcements: see, *Public Notice*, Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Frequencies in the Lower 80 Channels Scheduled for September 13, 2000, DA 00-668 (rel. March 23, 2000), 65 Fed. Reg. 17272 (March 31, 2000) (2,800 licenses to be auctioned); *Public Notice*, Auction of Licensees For 800 MHz Specialized Mobile Radio (SMR) Service in the General Category Band (851-854 MHz) and Upper Band (861-865 MHz), DA 00-1100 (rel. May 18, 2000) (rescheduling auction from August 23rd to August 16, 2000, and announcing procedures and minimum opening bids for 1,053 licenses).

²³ *Public Notice*, Auction of Additional Licenses for 800 MHz Specialized Mobile Radio (SMR) Service to Be Included in Auction No. 34 Scheduled for August 23, 2000: Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues, DA 00-877 (rel. April 18, 2000) (three additional licenses).

²⁴ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Order*, 13 FCC Rcd. 1533 (1997) (*Extended Implementation Order*); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order*, 12 FCC Rcd. 18,349 (1997).

twenty-two remaining as independent entities. The Commission will soon receive filings that will clarify the situation. Until then, we assume that there are twenty-seven remaining licensees in this category and that they all qualify as small businesses. However, we do not know how many of these licensees offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Therefore, estimating conservatively, we conclude that the number of small business SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that could be affected by a rule modification is up to 27 entities.

The Commission does not have an accurate estimate of the number of incumbent site-by-site SMR licensees, and a reliable figure will not be available until the SMR site-by-site licensees migrate to the Universal Licensing System. Making this estimate is complicated by the number of recent transactions that have occurred in the 800 MHz SMR service. However, our task is also greatly simplified for purposes of this regulatory flexibility analysis because we are looking for a very specific type of SMR licensee. That is, the licensee must: first, qualify as a small business (i.e., average annual gross revenues of \$15 million or less in the three preceding calendar years); second, offer real-time, two-way switched voice or data service that is interconnected with the public switched network; and third, use an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These criteria greatly restrict the number of SMR providers who could be affected by this new rule. Although there may be SMR carriers who provide such services it is high unlikely that they will be small entities or small businesses given the nature of the SMR providers and the development of that industry. Consequently, even though there may be no licensees that satisfy these criteria, we err on the sake of caution and conclude that 25 small entities may fall into this category.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

We anticipate that the rules adopted in this *Memorandum Opinion and Order on Reconsideration* will impose no reporting or recordkeeping requirements. The only compliance costs likely to be incurred, as a result, are administrative costs to ensure that an entity's practices are in compliance with the rule. The only compliance requirement of the new rules is that licensees subject to a manual roaming requirement (i.e., cellular licensees, broadband PCS licensees, and geographic area 800 MHz and 900 MHz SMR licensees that offer real-time, two-way, interconnected switched voice and data service) would have to provide manual roaming service upon request to subscribers of covered services in good standing who are using technically compatible equipment.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The Commission adopted the manual roaming rule, and generally affirms the rule in this *Memorandum Opinion and Order on Reconsideration*, in order, *inter alia*, to protect smaller and new CMRS providers of these services from likely competitive disadvantage. The Commission has reduced the potential impact of the new rules on small entities by continuing to exclude from its requirements those entities that have, traditionally, constituted the smallest of the SMR licensees, i.e., those licensees that do not provide real-time two-way voice or data services on an interconnected basis using in-network switching systems. The Commission has adopted an alternative definition of covered SMR that includes only those systems that have an in-network switching facility.²⁵ This exception to coverage addresses the concerns of

²⁵ *Resale Order on Reconsideration* at ¶ 2.

SMR providers that primarily offer traditional dispatch services but whose offer of limited interconnection capability might otherwise subject them to the manual roaming requirement. Such a result would have been inconsistent with the Commission's determination that only SMR providers that compete directly with cellular and broadband PCS should be subject to roaming requirements, because an important indicator of a provider's ability to compete with traditional cellular and broadband PCS providers is whether the provider's system has "in-network" switching capability.

By electing to adopt the in-network switching criterion, the Commission has rejected a definition of SMR covered services that would exempt SMR providers based on their particular number of mobile units or on capacity. The number of subscribers to an SMR system is not a reliable indicator of the system's capacity. Nor is it a reliable indicator of a system's ability to compete with cellular and broadband PCS providers. Thus, defining the term covered SMR in terms of its number of subscribers or its capacity could exempt from any manual roaming requirement those services that compete in markets where competitive conditions do not yet sufficiently ensure those customers seeking to roam access to roaming capabilities. As we stated in the *Second Report and Order*, and affirmed in this order, the manual roaming rule does not require any carrier to expand its capacity or to change its system in order to accommodate the needs of roamers.

VI. Report to Congress

The Commission will send a copy of this *Memorandum Opinion and Order on Reconsideration*, including a copy of this Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. §801(a)(1)(A). In addition, this *Memorandum Opinion and Order on Reconsideration* and this Supplemental FRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration. Finally, the *Memorandum Opinion and Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will be published in the Federal Register. *See* 5 U.S.C. § 604(b).

Appendix C

FINAL RULES

Part 20 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 20.12 is amended by revising paragraphs (a) and (b) to read as follows:

§ 20.12 Resale and roaming.

(a) *Scope of section.* This section is applicable to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), and Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in Part 90, Subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. The scope of paragraph (b) of this section, concerning the resale rule, is further limited so as to exclude from the requirements of that paragraph those Broadband Personal Communications Services C, D, E, and F block licensees that do not own and control and are not owned and controlled by firms also holding cellular, A, or B block licenses.

(b) *Resale.* The resale rule is applicable as follows:

- (1) Each carrier subject to paragraph (b) of this section shall not restrict the resale of its services, unless the carrier demonstrates that the restriction is reasonable.
- (2) ***

2. Section 20.12 is further amended by revising the first clause of paragraph (c) to read as follows:

(c) *Roaming.* Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, ***